


IN THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO

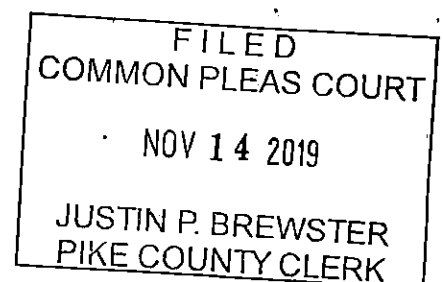
STATE OF OHIO,	:	Case No. 2018CR000158
Plaintiff,	:	Judge Randy D. Deering
vs.	:	
RITA JO NEWCOMB,	:	
Defendant.	:	

MOTION TO CONTINUE

Now comes the State of Ohio, by and through the Ohio Attorney General as Special Prosecutor for Pike County, and respectfully requests that this Court continue the jury trial currently set for November 18, 2019. The reasons for the State's motion are set forth fully in the attached memorandum.

Respectfully submitted,


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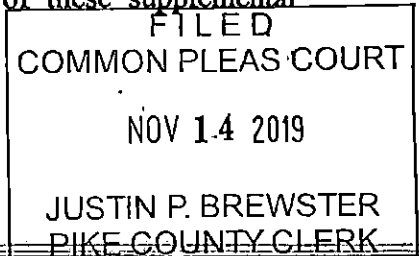


MEMORANDUM

Ohio Criminal Rule 16 is designed “to provide *all parties* in a criminal case with the information necessary for a full and fair adjudication of the facts.” Crim. R. 16(A) (emphasis added). “Once discovery is initiated by demand of the defendant, *all parties* have a continuing duty to supplement their disclosures.” *Id.* (emphasis added). “All duties and remedies are subject to a standard of due diligence, apply to the defense and prosecution equally, and are intended to be reciprocal.” Crim. R. 16(A).

Once the defendant serves a written discovery demand on the prosecuting attorney, a reciprocal duty of disclosure arises. Crim. R. 16(H). The defendant shall provide copies of materials that “are intended for use by the defense as evidence at trial, or were obtained from or belong to the victim, within the possession of, or reasonably available to the defendant.” Crim. R. 16(H). Defense counsel has a duty to provide the State with evidence that tends to support innocence or alibi. This allows the state to properly assess its case, prepare for trial, and re-evaluate the prosecution strategy, if necessary. Timely compliance with all provisions of Rule 16 is required, and is subject to judicial review. Crim. R. 16(M). Compliance with Rule 16 by all parties helps to ensure the fair administration of justice.

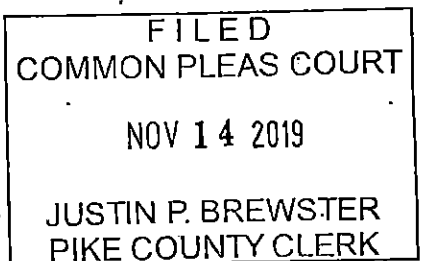
Here, the Defendant did not comply with its reciprocal duty of due diligence in its discovery obligations pursuant to Criminal Rule 16(A) and (H). Defendant’s initial demand for discovery was filed on December 3, 2018, and the State has consistently provided the defense with discovery and supplemental discovery since that time. The State provided Defendant with initial discovery on January 11, 2019, and supplemented discovery on March 28, 2019, May 23, 2019, June 26, 2019, July 25, 2019, and August 6, 2019. In each of these supplemental



disclosures, the State requested compliance with defense counsel's reciprocal duty of disclosure pursuant to Criminal Rule 16(H).

On June 10, 2019, Defendant filed her, up until that time, one and only response to the State's request for discovery. In that response, Defendant provided a witness list and documents intended to be used at trial. On that list was Bruce Dailey, who was said to be testifying "as to facts of case and to computerized documents. These are documents in his possession that will be offered under subpoena and are not now available to defendant at this time." Mr. Dailey represented Edward "Jake" Wagner, the Defendant's grandson, in a custody dispute with his deceased girlfriend, Hanna Rhoden. It is this custody dispute that is the center of the charges against Defendant. Defendant failed to provide any of these documents to the State for over five months, despite the State requesting compliance with defense counsel's reciprocal duty of disclosure on five occasions, three of which occurred after defense counsel indicated on June 10, 2019 the records would be forthcoming (June 26, 2019, July 25, 2019, and August 6, 2019). Even without these written State's requests, the Defendant had an ongoing obligation to provide these documents.

If the defense intended to use any of the documents that were in Mr. Dailey's possession, or to elicit testimony from him about them at trial, either directly or indirectly, it had a duty to exercise the due diligence mandated by Criminal Rule 16(A) in acquiring them. However, despite indicating to the State on June 10, 2019 that it intended to subpoena said records, the defense failed to do so until five months later on November 6, 2019. The defense waited until less than two weeks prior to trial to subpoena records in a case that has been pending for over a year.



On November 13, 2019, three business days prior to trial, counsel for Defendant provided the State with 198 files that were in Bruce Dailey's possession. The discovery was so cumbersome that it could not be effectively e-mailed, and counsel for Defendant did not serve the discovery on all counsel; special prosecuting attorneys from the Attorney General's Office were never served. The State is not aware of the contents of these documents, and it will take more than a few days to effectively review and prepare to rebut the voluminous discovery that was provided just days prior to trial. Defendant has provided no plausible just cause for her noncompliance with her discovery obligations. Regardless of the reason, the Defendant's violation of Criminal Rule 16 warrants a continuance in order for the State to meaningfully review the documents and adequately prepare for trial.

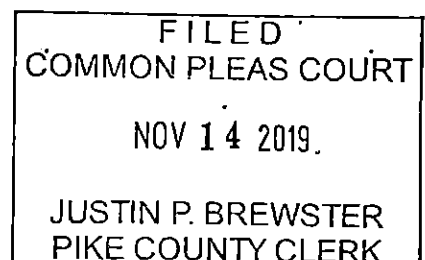
Also on November 13, 2019, three business days prior to trial, the defense for the first time disclosed as witnesses Charlie Reader, Brian Reader, and Kayla Slusher. The State objects to the defense calling these witnesses, requests time to file a motion in limine to prohibit their testimony, and to have a hearing on the matter. The State cannot fathom, and the defense has not articulated, what relevant and admissible testimony these witnesses would have to offer in this case. It is the State's belief that the defense only seeks to call these witnesses in order to impeach them or to force them to assert their Fifth Amendment rights and refuse to testify. As the Court is aware, this is not a permissible basis to call a witness, and the State would like the opportunity to file a motion in limine and have this issue heard at a hearing prior to trial. Again, had the State been given timely notice of these witnesses, the State could have timely filed the necessary motions, thus avoiding the issues that are currently before this court.

When looking at the circumstances surrounding the delayed disclosure of these witnesses and the 198 files, it is clear that due diligence was not utilized by the defense in its obligation to

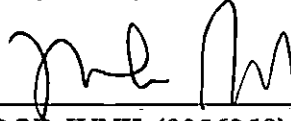
provide discovery as mandated by Criminal Rule 16(A) and (H). The three witnesses and nearly 200 documents were not just discovered by the defense, rather the defense was blatantly dilatory in its discovery obligations. Allowing the newly disclosed witnesses to testify and allowing the defense to rely on these documents or introduce them as evidence at trial would be extremely prejudicial to the State because it would not be able to effectively review the documents, cross-examine the witnesses, or properly object to their admissibility prior to trial. *See State v. Austin*, 1st Dist. Hamilton No. C-110804, 2012-Ohio-4232, ¶ 31.

Accordingly, the State asks for a reasonable continuance in order to meaningfully review the 198 files disclosed by the defense, and to file a motion in limine objecting to the testimony of the newly disclosed witnesses. Although the Defendant has waived speedy trial, any continuance as a result of the Defendant's knowing violation of Criminal Rule 16 should be charged to the Defendant and speedy trial time should be tolled. In the event this court does not want to delay the trial any further, the State requests this court exclude all of the last-minute items that are the subject of this dispute. Specifically, the court should exclude the 198 pages of documents (and references to them) as well as the newly disclosed witnesses.

Based on the foregoing, given the Defendant's failure to provide discovery as required by the Criminal Rules, the State of Ohio respectfully requests this Court continue the jury trial currently set for November 18, 2019. Criminal Rule 16 and all of the available remedies is to ensure the rights of all parties, not just the Defendant. The State asserts that a continuance or, in the alternative, an exclusion of the provided materials, is necessary in order to assure a "fair adjudication of the facts" and to "protect the integrity of the justice system" for all parties involved in this case.



Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was emailed to Frank Gerlach, Attorney for
Defendant, on November 14, 2019.



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